

SENATE BILL 2728

By Faulk

AN ACT to amend Tennessee Code Annotated, Section 37-1-126 and Section 37-1-150, relative to representation in juvenile court.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-1-126(a)(1), is amended by deleting the period at the end of the current subdivision, and by adding the following:

and is entitled to a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused.

SECTION 2. Tennessee Code Annotated, Section 37-1-126(b), is amended by deleting the existing subsection and by substituting instead the following:

(b) A person is indigent if:

(1) That person does not possess sufficient means to pay reasonable compensation for the services of a competent attorney or guardian ad litem. In determining indigency, the court shall consider the financial resources of the child and the child's parents, legal custodians or guardians; or

(2) In the case of a child, if the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation but refuse to do so timely, the court may make written findings determining this as indigency; provided, the court shall assess the administrative fee and costs pursuant to § 37-1-150(g).

SECTION 3. Tennessee Code Annotated, Section 37-1-126(c)(1), is amended by deleting the existing subdivision, substituting the following, and redesignating the subsequent subdivisions accordingly:

(c)

(1) A child who is provided with court-appointed counsel pursuant to this section, the child's parents, legal custodians or guardians, or any adult defendant or respondent who is provided with court-appointed counsel pursuant to this section shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The parents, legal custodians or guardians of a child who is appointed a guardian ad litem shall be assessed by the court an administrative fee as provided in this subdivision (c)(1).

(2) The administrative fee shall be assessed only one (1) time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents, legal custodians or guardians lack financial resources sufficient to pay the fee in such amount. In cases where a guardian ad litem is appointed, the financial resources of the child shall not be considered. The fee may be increased by the court to an amount not in excess of two hundred dollars (\$200) upon a finding that the child, the child's parents, legal custodians or guardians, or an adult defendant or respondent possess sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, that the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever first occurs. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided,

that willful failure to pay such fee may be weighed by the court when determining appropriate disposition of the case.

SECTION 4. Tennessee Code Annotated, Section 37-1-126(c), is further amended by adding the following language at the end of current subdivision (3):

In cases where a guardian ad litem is appointed, the court shall have discretion to waive the administrative fee if the case is dismissed.

SECTION 5. Tennessee Code Annotated, Section 37-1-126(c), is further amended by deleting current subdivision (4) in its entirety and by substituting instead the following:

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Tennessee administrative director of the courts. The report shall indicate the following:

(A) Number of children and adults for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court appointed a guardian ad litem pursuant to § 37-1-149;

(C) Number of children and adults for whom the court appointed counsel and waived the administrative fee;

(D) Number of children for whom the court appointed a guardian ad litem and waived the administrative fee;

(E) Number of children and adults from, or on behalf of, whom the clerk collected administrative fees;

(F) Total amount of commissions retained by the clerk from such administrative fees; and

(G) Total amount of administrative fees forwarded by the clerk to the state treasurer.

SECTION 6. Tennessee Code Annotated, Section 37-1-150, is amended by adding the following language at the end of subdivision (a)(2):

provided, however, that in the case of indigent persons appointed counsel pursuant to § 37-1-126, the state, through the administrative office of the courts, shall pay such compensation. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to this subdivision (a)(2). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(2). The court may adopt such other rules related to this subdivision (a)(2) as it deems appropriate in the public interest;

SECTION 7. Tennessee Code Annotated, Section 37-1-150, is amended by deleting the following language from subdivision (a)(3):

Reasonable compensation for a guardian ad litem, except that in the case of indigents, the state, through the administrative office of the courts, shall pay for the guardian ad litem required by § 37-1-149 for proceedings arising under part 4 of this chapter.

and by substituting instead the following:

Reasonable compensation for a guardian ad litem, except that in the case of indigent persons, the state, through the administrative office of the courts, shall pay for the guardian ad litem required by § 37-1-149 for proceedings alleging a child to be dependent and neglected or abused.

SECTION 8. Tennessee Code Annotated, Section 37-1-150(d)(1) and (2), are amended by deleting the language “or other persons legally obligated to care for and support the child” wherever it appears and by substituting instead the language “, legal custodians or guardians”.

SECTION 9. Tennessee Code Annotated, Section 37-1-150, is further amended by deleting subdivisions (e)(1) and (e)(2) in their entireties and by renumbering the subsequent subdivisions accordingly.

SECTION 10. Tennessee Code Annotated, Section 37-1-150, is further amended by deleting current subsections (f) and (g) and by substituting instead the following:

(f) Costs for proceedings under this title or the costs of the care or treatment of any child that is ordered by the court shall be paid by the state only when specifically authorized by this title or other provisions of law.

(g)

(1) In proceedings where the child is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel or a guardian ad litem to represent the child, but finds the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation the court shall enter an order directing the child, child's parents or legal custodians or guardians to pay into the registry of the clerk of the court any sum that the court determines the child, child's parents or legal custodians or guardians is able to pay.

(2) In proceedings where an adult is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel to represent the adult and finds the adult financially able to defray a portion or all of the cost of the adult's representation, the court shall enter an order directing the adult to pay into the registry of the clerk of the court any sum that the court determines the adult is able to pay.

(3) The sum to defray a portion or all of the costs shall be subject to execution as any other judgment. The court may provide for payments to be

made at intervals, which the court shall establish, and upon terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances.

(4) The clerk of the court shall collect all monies paid pursuant to this subsection (g). The clerk shall notify the court of any failure to comply with the court's order. At the conclusion of the proceedings, the court shall order the clerk to pay to the administrative office of the courts any funds that the clerk collected. The clerk of the court shall receive a commission of five percent (5%) of the monies collected for the clerk's services in collecting, handling and making payment pursuant to the order of the court.

(5) If the administrative office of the courts receives funds greater than the total amount which appointed counsel or the guardian ad litem has claimed and has been reimbursed pursuant to Supreme Court Rule 13, then any such excess funds shall be paid to the appointed attorney.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.